

REMARKS

Claims 32-47 are pending in the present application. Claims 43, 44, 46, and 47 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,535,726 to Johnson. Claims 32-42 and 45 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Johnson in view of U.S. Patent No. 6,356,752 to Griffith.

Rejection of Claims 43, 44, 46, and 47 Under 35 U.S.C. § 103(a)

Claims 43, 44, 46, and 47 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,535,726 to Johnson. This rejection is respectfully traversed.

The examiner has not established a *prima facie* case of obviousness by reciting Johnson in combination with what is “well known in the art.” To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP § 706.02(j). The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant’s disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

As similarly discussed in the previous Response, Johnson does not teach or suggest each and every element of claims 43, 44, 46, and 47. More specifically, Johnson does not teach or suggest “debiting at least one account of the customer substantially in real-time in response to the debit message,” as recited in independent claim 43. To the contrary, Johnson recites debiting a customer’s cellular telephone bill rather than a substantially real-time debit of an account. “The supporting cellular network 160 processes the transaction charges against the customer account associated with the cellular telephone 140. The transaction charges would then appear on the customer’s cellular telephone bill.” Col. 6, lines 17-20 (emphasis

added). Thus, Johnson recites charging a telephone bill, which would eventually be received by the customer. The customer would then pay the telephone bill, which would eventually be received by the telephone company, who would process the request to debit the customer's telephone account. Such a lengthy process runs contrary to claim 43, which recites "a substantially real-time debit of an account." When paying a bill using a wireless remote terminal, a "real-time debit of an account" cannot be disclosed by processing charges on a telephone bill. Charging a telephone bill does not teach or suggest a debiting of an account.

On page 3 of the Office Action, the Examiner recognizes that "Johnson does not disclose debiting at least one account of the customer substantially in real-time in response to the debit message." In order to cure the deficiencies of Johnson, the Examiner improperly relies on one of ordinary skill by reciting that "debiting one account of the customer substantially in real-time in response to the debit message is well-known in the art." The Examiner provides no support for this assertion. It is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. *Zurko*, 258 F.3d at 1385, 59 USPQ2d at 1697 ("[T]he Board cannot simply reach conclusions based on its own understanding or experience-or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings."); MPEP 2144.03 (emphasis added).

The Office Action does not provide the proper motivation to modify Johnson's recitation of charging a telephone bill to debiting an account in real-time over a cellular network. Significantly, it has been judicially held that generalizations do not establish the requisite motivation to modify a specific reference in a specific manner to arrive at a specifically claimed invention. *See In re Deuel*, 51 F.3d 1552, 34 USPQ2d 1410 (Fed. Cir. 1995). The Examiner's conclusory statements are inappropriate without the Examiner providing specific factual findings predicated on sound technical and scientific reasoning to support the Examiner's conclusory statements. The Examiner is relying on conclusory statements and has not provided

proper motivation for using “common knowledge” to cure the deficiencies of Johnson to establish debiting an account in real time over a cellular network. Thus, the Examiner has not met his burden of establishing a *prima facie* case of obviousness.

Therefore, Johnson does not suggest each and every element of claim 43 as required by 35 U.S.C. §103(a). For at least these reasons, independent claim 43, as well as dependent claims 44, 46, and 47 are allowable over the cited art. Accordingly, it is respectfully requested that the rejection of claims 43, 44, 46, and 47 as being anticipated by Johnson be withdrawn.

Rejection of Claims 32-42 and 45 Under 35 U.S.C. § 103(a)

Claims 32-42 and 45 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Johnson in view of U.S. Patent No. 6,356,752 to Griffith. This rejection is respectfully traversed.

The combination of Johnson and Griffith does not establish a *prima facie* case of obviousness. Neither Johnson nor Griffith teach or suggest each and every element of independent claim 32. More specifically, as similarly discussed above, Johnson does not teach or suggest “selectively effect debiting of the customer account substantially in real-time,” as recited in claim 32. As discussed above, Johnson recites billing to a customer’s telephone account, rather than debiting from an account in real-time. Also as discussed above, the Examiner is relying on conclusory statements and has not provided proper motivation to modify charging a telephone bill to debiting an account in real time over a cellular network, thus the Examiner has not met his burden of establishing a *prima facie* case of obviousness.

Griffith does not cure the deficiencies of Johnson. Griffith recites “specifying the type of account against which the transaction is to be billed.” Col. 2, lines 12-13 (emphasis added). Further, Griffith recites, “If a credit card number is being utilized, site computer 104 will contact a credit card database to verify that the number is valid.” Col. 3, lines 54-56. One recognizes that a credit card transaction is not the real-time debiting of a customer’s account. In a credit card transaction, the customer receives a bill each month. The customer pays the bill and the credit card company

processes the payment to debit the customer's account. In contrast, the present application recites "debiting ... substantially in real-time." The "real-time" debiting is not taught or suggested by the payment systems in Johnson and Griffith, which are likely to occur weeks later.

Therefore, neither Johnson nor Griffith, singularly or in combination, teach or suggest each and every element of claim 32 as required by 35 U.S.C. §103(a). For at least these reasons, independent claim 32, as well as dependent claims 33-42, are allowable over the cited art. Additionally, since independent claim 43 is patentable over Johnson for the reasons stated above and since Griffith does not cure the deficiencies of Johnson, claim 45 is patentable over the cited art for the same reasons stated above. Accordingly, it is respectfully requested that the rejection of claims 32-42 and 45 under 35 U.S.C. §103(a) be withdrawn.

CONCLUSION

The undersigned representative respectfully submits that this application is in condition for allowance, and such disposition is earnestly solicited. If the Examiner believes that the prosecution might be advanced by discussing the application with the undersigned representative, in person or over the telephone, we welcome the opportunity to do so. In addition, if any additional fees are required in connection with the filing of this response, the Commissioner is hereby authorized to charge the same to Deposit Account No. 501458.

Respectfully submitted,

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